IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8851 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHWINBHAI H. BHATT

Versus

CADILA LABORATORIES LTD.

Appearance:

1. Special Civil Application No. 8851 of 1993

MR HS MUNSHAW for Petitioner No. 1-3

M/S TRIVEDI & GUPTA for Respondent No. 1

MR SIRAJ GORI ASST GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 25/11/2003

ORAL JUDGEMENT

Heard learned advocate Mr.H.S.Munshaw on behalf of the petitioner and learned advocate Mr.Kartik Thakar

for respondent No.1, so also, learned AGP Mr.Siraj Gori for respondent No.2.

In the present petition, considering the prayer made by the petitioner challenging the common order dated 26th May, 1992 passed by the labour court, Ahmedabad in Recovery Application No.133 / 1991 to 137 / 1991 which is annexed to the present petition at Annexure-B.

The further prayer is to declare that the petitioners are entitled and eligible to all the benefits under the Settlements arrived at between the respondent No.1 and the representatives of the employees and further direct the respondent No.1 to make payment accordingly to the petitioner. The order passed by the labour court in above referred recovery application on 26th May, 1992. The labour court has examined the issue in light of the fact that according to the workman, there was 2[p] settlement under the provisions of the I.D.Act, 1947 on 23rd February, 1987 and the respondent has not given any benefit which accrued from the said settlement. The contention raised by the respondent that no settlement has been arrived at with the Union by the respondent and ultimately, on 23rd February, 1987, one settlement has been arrived at between the Union and management under Section 2[p] of the I.D.Act, 1947. According to the terms of the settlement, those employees intend to avail benefits of the said settlement, then, they should give in writing to accept each terms of the settlement and there was also specific clause made in the settlement that those who are not giving in writing while accepting the terms of the settlement, they are not entitled to benefits of the said settlement. The contention raised by the employer is that this being not the settlement arrived at by the Union and management during the course of conciliation proceedings under Section 12[3] of the I.D.Act, 1947. Therefore, the settlement arrived at under Section 2[p] of the I.D.Act, 1947 being private settlement applied to the persons those who have signed the said settlement. But the workmen who have not signed the settlement are not entitled to such benefits and therefore, the workmen are not entitled to benefit of said settlement. No oral evidence led by the workman before the labour court except to produce documentary evidence. Ultimately, the labour court has come to the conclusion that the labour court has considered the terms of the settlement that those who have signed the settlement, would be entitled to benefit accrued from the said settlement and those who are not signatory of the said settlement, they were not being governed by the said settlement. Therefore, considering these facts,

ultimately, the labour court has come to the conclusion that whether the workmen are entitled to benefit of said settlement dated 23rd February, 1987 or not and whether settlement is applicable to the facts of the present petitioner and whether the workmen are entitled to difference of salaries as per the said settlement. This aspect has been discussed by the labour court in its reasoning part. Before the labour court, according to the management, this was the settlement arrived by the management directly with the workman under Section 2[p] of the I.D.Act, 1947 and therefore, that was not settlement with the Union. This settlement under Section 2[p] of the Act being a private settlement, it applied to the persons who had signed the said settlement. Ultimately, the labour court has also considered that said settlement was challenged by the Cadila Workers Union being Special Civil Application No.3197 / 1988 and that petition was withdrawn by the Cadila Workers Union before this Court on 4th September, 2001. Ultimately, after appreciation of the documentary evidence, the labour court has come to the conclusion that the petitioners are the workmen who had not signed the said settlement and not accepted the terms thereof and therefore, as per the terms and conditions incorporated in the settlement, the petitioners herein have failed to prove this fact before the labour court. Therefore, ultimately the labour court has come to the conclusion that when the petitioners have failed to prove that it is binding to the petitioners and therefore, labour court has rightly come to the conclusion that settlement dated 23rd February, 1993 is not binding to the petitioners.

I have perused the entire order passed by the labour court and considering the act that once private settlement has been arrived at between the management and the workmen under Section 2[p] of the I.D.Act, 1947 then, it is only binding to the parties who are signatory to the settlement except no other person is entitled to benefit of such settlement. It was not case of the petitioners that this settlement has been arrived during the course of conciliation proceedings. Therefore, considering all these aspects of the matter, according to my opinion, the labour court has rightly appreciated the documentary evidence and the petitioners had failed to prove before the labour court that they are entitled to benefit of the said settlement.

In view of above discussion, according to my opinion, the labour court has not committed any error while rejecting the recovery application filed by the petitioners. The labour court has not committed any

error and the finding given by the labour court is legal and valid and as such, there is no perversity in the finding recorded by the labour court and the same does not call for any interference by this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, there is no substance in the present petition and the same is rejected accordingly.

Rule is discharged. No order as to costs.

Date : 25.11.2003 [H.K.Rathod, J.]

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